

REMARKS/ARGUMENTS

Applicant appreciates the Examiner's thorough search and examination of the present patent application.

Claims 1-8, 12, 13 and 15 are amended to define applicant's invention. Applicant submits that the changes to these claims make explicit that which applicant believed to be already implicit.

Claims 1-15 stand rejected under 35 U.S.C. §101 on the grounds that the claimed invention is directed to non-statutory subject matter. Independent claims 1, 6 and 7 have been amended to include the particulars of a machine, i.e., a "processor" and, accordingly, satisfy the "machine or transformation" test. Applicant submits that claims 1-15 are directed toward patent-eligible subject matter.

Claims 1, 3-4, 7-11 and 13 stand rejected under 35 U.S.C. §102(b) as being anticipated by Brown ("Brown," U.S. Patent No. 5,832,448). Applicant respectfully traverses this rejection.

Applicant's amended claim 1 recites, among other features, "identifying" "key member characteristics" that include "at least one of vital statistics, occupations, family histories and lifestyles of the respective members" of a population. Further, applicant's amended claim 1 recites "obtaining" "electronic population data" that conform to the "key medical characteristics and the key member characteristics." Moreover, applicant's amended claim 1 recites "establishing" "a set of logical rules for medical analysis, wherein the logical rules are based on one or more of accepted medical teachings, medical standards and protocols, drug formularies and the organized and structured electronic population data." Applicant's other independent claims 6 and 7 includes a similar patentable combination of features.

Brown does not teach, disclose or suggest at least this combination of features set forth in applicant's independent claims 1, 6 and 7. Instead, Brown is directed to monitoring multiple patients for proactive health management. Nowhere in Brown is any teaching, suggestion or disclosure of identifying "key member characteristics," "obtaining electronic population data," and establishing" a "set of logical rules," as defined in applicant's claims.

In the Office Action, the Examiner relies on Brown's "control value" for teaching applicant's claimed "logical rules." On the contrary, Brown expressly states that the "control value" "[indicates] the patient's control over the health condition." Applicant's claimed "logical

rules” is patentably distinct from Brown’s control value.

Accordingly, features of applicant’s claims 1, 6 and 7 are missing from the teachings of Brown and, therefore, Brown cannot anticipate applicant’s claims 1 and 7 under 35 U.S.C. §102(b).

Claims 3-4, 8-11 and 13 depend directly or indirectly from claims 1 and 7, and are patentable as well, because of the combination of features in those claims with the features set forth in the claim(s) from which they depend.

Claims 2 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Applicant Admitted Prior Art (“AAPA”). Applicant respectfully traverses this rejection.

Claims 2 and 12 depend directly from claims 1 and 7, respectively, and are patentable for the same reasons as described above in connection with the rejection under 35 U.S.C. §102(b), as well as because of the combination of features in those claims with the features set forth in the claim(s) from which they depend.

Claims 5-6 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown. Applicant respectfully traverses this rejection.

Claims 5 and 15 depend indirectly from claims 1 and 7, respectively, and are patentable for the same reasons as described above in connection with the rejection under 35 U.S.C. §102(b), as well as because of the combination of features in those claims with the features set forth in the claim(s) from which they depend.

Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Official Notice. Applicant respectfully traverses this rejection.

Claims 14 depends indirectly from claim 7 and is patentable for the same reasons as described above in connection with the rejection under 35 U.S.C. §102(b), as well as because of the combination of features in those claims with the features set forth in the claim(s) from which they depend.

Accordingly, and in view of the above-identified amendments to the claims and remarks set forth above, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on April 7, 2009:

Joel J. Felber

Name of applicant, assignee or
Registered Representative

Signature

April 7, 2009

Date of Signature

LCD:JJF:ck

Respectfully submitted,

Joel J. Felber

Registration No.: 59,642

OSTROLENK, FABER, GERB & SOFFEN, LLP

1180 Avenue of the Americas

New York, New York 10036-8403

Telephone: (212) 382-0700